

PATENT APPLICATION

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Susan Wilkes, Paralegal

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Applicant: Katalin Coburn

Serial No. 10/814,519

Filed: April 1, 2004

For: PROCESS FOR MAKING NON-EMULSIFIED  
SPICED OR FLAVORED PEANUT BUTTER  
SPREADS, WITH LOWER FAT CONTENT,  
LONG SHELF LIFE, AND MINIMUM OIL  
SEPARATION

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Examiner: Helen F. Pratt

Group Art Unit: 1794

Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
ATTN: Board of Patent Appeals and Interferences

**APPLICANT'S REPLY TO EXAMINER'S ANSWER**

In the Answer to Applicant's Appeal Brief, the Examiner, at the second full paragraph on page 14 thereof, states that "the references were used for what was cited as above and combined for the cited reasons. Appellant's analysis uses parts of the references that were not even cited to state that the combination was improper". However, as explained by the Examiner at page 10, third full paragraph, "[t]he use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain". See MPEP § 2123I. The Examiner cannot have it both ways: She cannot state that the references are relevant for all that they contain and then limit what they teach to just a few passages in

each reference and combine those few passages to reject Applicant's recited claims. If the references are combined and they are relevant for all they contain, then they would teach a nut butter or nut butter spread that contains some or all of the ingredients that are expressly not contained in Applicant's recited claims. Applicant's claims recite in pertinent part, "a nut butter comprising...the resulting nut butter not containing hydrogenated oils; the resulting nut butter not containing stabilizers; the resulting nut butter not containing an emulsifier; and the resulting nut butter not containing a bulking agent" (emphasis added). The combination of the cited references would contain either: hydrogenated oils and/or stabilizers and/or emulsifiers and/or a bulking agent, which are all expressly not contained in Applicant's recited claims.

Thus, if the cited references are relevant for all that they contain, then the references teach away from each other and teach away from Applicant's recited claims. According to MPEP § 2146(X)(D)(2), "[i]t is improper to combine references where the references teach away from their combination". In this case, the references teach away from their combination.

Many of the references teach away from each other. For example, Rombauer's peanut butter that is at least 90% peanuts could not be combined with Yokoyama et al. since the peanut butter disclosed in Yokoyama et al. contains 15 to 40% by weight bulking agent (see Yokoyama et al. Co. 2, line 68 to Col. 3, line 1). Edson's peanut candy could not be combined with the "crunchy" peanut butter of Yokoyama et al. since Edson's peanuts are required to be in a fluid or semi-fluid state (see Edson lines 29-32). Bolton could also not be combined with Rombauer. Rombauer teaches that federal regulations require commercial peanut butter to contain at least 90% shelled roasted ground peanuts while Bolton adds cucumber pickles to a food product having a consistency of cheese. The food product of Bolton does not contain the required 90% shelled roasted ground peanuts as taught in Rombauer. Further, Avera uses blanched nuts while Cammarn et al. teaches the opposite, using unblanched white-skinned peanuts. Thus, one skilled in the art would not combine the cited references since many of them teach away from each other and some even teach opposite elements.

The Examiner incorrectly states on page 11, first full paragraph, "Appellant makes the same arguments for Rombauer, Yokoyama, et al. and Bolton, that basically the references contain other ingredients than are claimed. The claims are open comprising claims". However, Applicant does not argue that the cited references merely teach other ingredients than those that are claimed. The cited

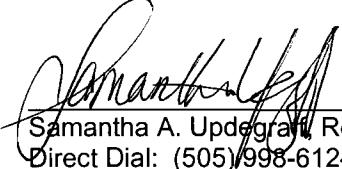
references teach ingredients that are specifically and expressly not contained in the claims. Thus, the cited references disclosing the "not containing" elements of Applicant's recited claims, teaches away from the recited claims.

In addition, "[t]he totality of the prior art must be considered, and proceeding contrary to accepted wisdom in the art is evidence of nonobviousness". See MPEP § 2146(X)(D)(3). In this case, the totality of the cited references suggests that using hydrogenated oils and/or stabilizers and/or emulsifiers and/or a bulking agent in nut butters and nut butter spreads is accepted wisdom. Thus, Applicant's recited claims, which proceed contrary to the cited references, is further evidence that Applicant's recited claims are not rendered obvious over the cited references.

Claims 1, 14, 33 and 42 are believed to be patentable. Claims 5-8, 11-16, 18, 21, 22, 25, 29-33, 35-43, and 45-52, which are dependent on claims 1, 14, 33 and 42, are also believed to be patentable. Allowance of the patent application is respectfully requested.

Respectfully submitted,

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